Supreme Court, U.S.
FILED
FEB 22 2000
CLERK

(3)

No. 99-1153

In The

Supreme Court of the United States

October Term, 1999

I. PARKER HUFF,
Petitioner,

v.

NORTHWEST SAVINGS BANK,
f/k/a:
FIRST NATIONAL BANK OF CONTRE HALL,
Respondent.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Third Circuit

---

REPLY TO BRIEF IN OPPOSITION

I. Parker Huff, Pro Se

258 Toftrees Avenue #115
State College, Pa. 16803
(814) 237-1984
Petitioner

Dated: February 18, 2000

12pp

QUESTIONS PRESENTED

1. Whether it is clear error when the bankruptcy court omits necessary and critical facts of record from it's findings and conclusions, resulting in an ultimate unpublished decision that squarely contradicts the prior published holding of the 3rd Circuit that is directly on point, thus requiring remand with instructions?

2. Whether, the bankruptcy court failure to hold the required Bankruptcy Rule 9020(b) hearing, mandated by the United States Supreme Court, pursuant to motion for contempt, for contemptuous acts committed outside the presence of the court, is clear reversible error?

TABLE OF CONTENTS

QUESTIONS PRESENTED		i
TABLE OF CONTENTS		ii
TABLE OF CITATIONS		iii
I.	PRIOR STATE COURT LITIGATIONHAS NO BEARING ON DISCHARGEABLE/NON-DISCHARGEABLE ISSUE	1
II.	THE REQUIREMENTS OF RULE 10 ARE FULLY MET.	3
III.	ALL ISSUES RAISED IN THIS PETITION FOR WRIT OF CERTIORARI ARE PROPERLY REVIEWABLE BY THIS COURT PURSUANT TO 28 U.S.C. §1254.	7
CONCLUSION		8

TABLE OF CITATIONS

Fernandez-Lopez, 37 B.R. at 669 7

Huff v. First National Bank of Centre Hall, 676 A.2d 289 Pa. Super. (1995), allocatur denied, 681 A.2d 178 (Pa. 1996) cert denied, 520 U.S. 1210 (1997) 1

In re Hunter, 970 F.2d at 310 6

In re Pavelich, 229 B.R. 777 (9th Cir. BAP 1999) at 781-784 6

In re Stendardo, 991 F.2d 1089 (3rd Cir. 1993) 4

In re Stephenson, 96 B.R. 388, 389 n.1 (Bankr.S.D.Fla. 1988) 6

Insilco Corp. v. Rayburn, 543 A.2d 120,123 (Pa. Super. Ct. 1988) 5

Johnson v. Home State Bank, 501 U.S. 78, 84 (1991) 3

Kalb, 308 U.S. at 439, 60 S.Ct. 343 7

Lance v. Mann, 360 Pa. 26, 60 A.2d 35, 36 (1948) 4

Local Loan Co. v. Hunt, 292 U.S. 234, 54 S.Ct. 695, 78 L.Ed. 1230 (1934) 1

I. PRIOR STATE COURT LITIGATION HAS NO BEARING ON DISCHARGEABLE / NON-DISCHARGEABLE ISSUE.

The Respondent's brief is simply attempting to cloud the issues before this Court by trying to raise prior state court matters that are clearly NOT material to this Petition for Writ of Certiorari. Enforcing a bankruptcy court's discharge order in the face of a final state court judgment is permitted. *Local Loan Co. v. Hunt*, 292 U.S. 234, 54 S.Ct. 695, 78 L.Ed. 1230 (1934).

The State Court litigation the Respondent cites in their brief rises from Respondent's prior State Court actions taken in violation of the discharge injunction. NONE of these prior actions and judgments cited by the Respondent raises the issue of non-discharge-ability. Likewise, NONE of the post-discharge claims made by the respondent in their petition of August 5, 1993 (See App. B, P.6b-12b) where ever determined, by any court, to be non-dischargeable. See *Huff v. First National Bank of Centre Hall*, 676 A.2d 289 Pa. Super. (1995), *allocatur denied*, 681 A.2d 178 (Pa. 1996) *cert denied*, 520 U.S. 1210 (1997); *Huff v. Northwest Savings Bank*, No. 594 HBG 1998

(Pa. Super. Mar. 30, 1999), *allocatur denied*, No. 174 M.D. Misc. Dkt. 1999 (Pa. Oct. 27, 1999).

The Congress has clearly stated, and it is supported in all Circuits, that after §524 discharge, it is NOT the debtor's burden to have to defend any violation of the discharge or discharge injunction, in any court, by any unscrupulous creditor's attempt to circumvent the discharge and injunction. Rather, Congress has provided, and this Court has repeatedly supported the provision that if creditors believe they have a valid claim post-discharge, they may petition the Bankruptcy Court to have the claim be determined to be non-dischargeable, at which time the claim(s) would become fully enforceable. This premise is a fundamental principle of the Code, and without it the principle of the discharge would be meaningless and the effect of the Code useless.

Clearly, the Respondent's claims as set forth in the Petition for Writ pages 9-14, and Petitioner's Motion for Contempt have no lawful foundation ((App. To Brief at Docket No. 99-7027, (Appeal to Third Cir.) P. 51-61)), (See, App. B, P. 6b-17b, for more detail.). The Respondent had NO lien for said claims prior to the

discharge of June 24, 1993. The action taken by the Respondent on August 5, 1993, attempting to create a lien for these claims is clearly barred by the injunction. Further, the Respondent NEVER took any steps in any court to have said claims be determined non-dischargeable, and without such a determination none of the Respondent's arguments hold water.

II. THE REQUIREMENTS OF RULE 10 ARE FULLY MET.

The requirements of Rule 10 are clearly evident in this Petition and provide compelling need and sound reason to grant this Writ of Certiorari, in order to resolve the conflict of the holding below in the present matter with the prior published holdings of the Third Circuit and the decisions of this Court.

The Third Circuit wrongly applied *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) to the present matter in its opinion at page 4 (App. A, P. 11a).

In *Johnson*, the petitioners mortgage was in existence at the time of discharge, and thus: although the personal liability was discharged, the mortgage was determined by this Court to be a claim

that could be included in subsequent chapter 13 reorganization.

In the present matter, the Petitioner's mortgage was reduced to judgment, in 1989, one year prior to his filing bankruptcy (App. B, P. 4b-5b). At the time of discharge on June 24, 1993, by operation of Pennsylvania State Law and as held by the Pennsylvania Supreme Court (See, *Lance v. Mann*, 360 Pa. 26, 60 A.2d 35, 36 (1948)) the mortgage no longer existed to provide any basis for a claim. This holding is identical to and is fully supported by the Third Circuit in *In re Stendardo*, 991 F.2d 1089 (3rd Cir. 1993) at 1094, which remains the controlling published decision on this matter to this day.

The fact is the mortgage was reduced to judgment prior to the bankruptcy in the present matter. This fact was omitted by the Bankruptcy Court from its findings and conclusions (App. A, P.1a-3a), despite the fact that the Respondent had filed a Proof of Claim with the Court (including a copy of the mortgage, note, and foreclosure judgment) on July 5, 1990, and at hearing on June 12, 1991, was admitted the same into evidence (Document No. 63 at Docket No. 1-90-00917RJW) before the same Judge.

Likewise, the Bankruptcy Court not only omitted the existence of the foreclosure judgment, but also the fact that the foreclosure judgment DID NOT provide any basis for the Respondent's claims sued for on August 5, 1993.

Clearly, without a mortgage or a lawful basis for the Respondent's said claims, the *Johnson v. Home State Bank* holdings simply are not on point and do not apply to the present matter.

The Third Circuit then held that the Respondent did not attempt to hold the Petitioner personally liable in their August 1993 petition, citing *Insilco Corp. v. Rayburn*, 543 A.2d 120,123 (Pa. Super. Ct. 1988), saying the Respondent's subsequent judgment was strictly in rem (App. A, P. 11a).

This is simply NOT TRUE!

There is NO basis for the respondents August 1993 claims within the foreclosure judgment.

There is NO basis for these claims in the original mortgage.

What the Respondent really did, was to sue the Petitioner in State Court,

first to obtain a judgment against the Petitioner, then hoping to create a lien for their August 1993 claims they thought would be enforceable.

However, this action was barred by the Discharge. This position is further supported *In re Hunter*, 970 F.2d at 310; *In re Stephenson*, 96 B.R. 388, 389 n.1 (Bankr.S.D.Fla. 1988); 3 *Collier on Bankruptcy* ¶¶ 506.07, 524.01 (15th Ed. 1992); *In re Hunter*, 970 F.2d at 310-11.

Further demonstrating the absolute necessity for review in light of the Bankruptcy Court's clear omission of terms of the foreclosure judgment and the lack of a valid mortgage, of these holdings, is *In re Pavelich*, 229 B.R. 777 (9th Cir. BAP 1999) at 781-784, that ``...Congress was expressly making it possible for a discharged debtor to ignore a creditor's subsequent action in a non-bankruptcy court.'' 4 Lawrence P. King, et al., *Collier on Bankruptcy* ¶ 524.LH (15th ed. Rev. 1998); `` discharge is an absolute defense...'' *See* H.Rep. No. 91-1502, 91st Cong. 1-2 (1970); S.Rep. No. 91-117, 91st Cong. (1970); 116 Cong.Rec. 9549 (1970) (Statement of Cong. Wiggins); ``...void judgments can be collaterally

attacked...'' *Fernandez-Lopez*, 37 B.R. at 669; and lastly citing, ``The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land.'' *Kalb*, 308 U.S. at 439, 60 S.Ct. 343.

III. ALL ISSUES RAISED IN THIS PETITION FOR WRIT OF CERTIORARI ARE PROPERLY REVIEWABLE BY THIS COURT PURSUANT TO 28 U.S.C. § 1254.

28 U.S.C. § 1254 states in pertinent part:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to a civil or criminal case, before or after rendition of a judgment or decree;

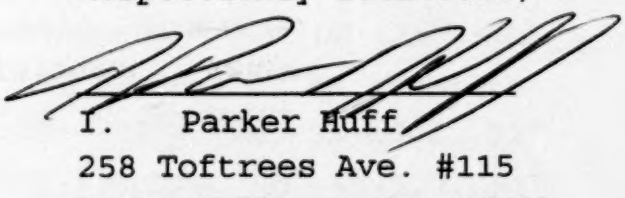
All issues raised in the Petitioner's Petition for a Writ of Certiorari where properly raised in his Appeal from the Final Order of the United

States District Court for the Middle District of Pennsylvania Dated December 23, 1998, at Docket No, 4:cv-98-1782, timely filed with the United States Court of Appeals for the Third Circuit at Case Docket No. 99-2027, and fully set out in Petitioner's Brief of Appellant pages 1-3, filed on April 12, 1999.

CONCLUSION

Without doubt, Stendardo is clearly the holding that must be applied to the present matter. The facts of the present matter mirror Stendardo. However, because the Bankruptcy Court and the appellate courts on review omitted the critical facts of record, both Courts reached the wrong conclusions. This clear error results in two opposite results from identical facts that cannot be accepted if continuity and credibility is expected from our Courts.

Respectfully submitted,



I. Parker Huff
258 Toftrees Ave. #115
State College, Pa. 16803
(814) 237-1984

Dated: February 18, 2000